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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,775	05/10/2001	Rabindranath Dutta	AUS920010433US1	5097

7590 01/06/2005

Robert V. Wilder
Attorney at Law
4235 Kingsburg Drive
Round Rock, TX 78681

EXAMINER	
TANG, KUO LIANG J	

ART UNIT	PAPER NUMBER
2122	

DATE MAILED: 01/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/852,775	DUTTA ET AL.	
	Examin r	Art Unit	
	Kuo-Liang J Tang	2122	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 September 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This Office Action is in response to the amendment filed on 9/30/2004.

The priority date for this application is 5/10/2001.

Claims 1-29 are pending and have been examined.

Response to Arguments

2. Applicant's arguments with respect to claims 1-29 have been considered but are moot in view of the new ground(s) of rejection.

Claims (1-11), (12-22) and (23-29) are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims (1-9), (8-18) and (19-27) of co-pending Application No. 09/852,774 respectively.

Claims 1-7, 12-18 and 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Alessandro, in view of Parthsarathy, and further in view of D'Souza.

Claims 8-11, 19-22 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Alessandro, in view of Parthsarathy, further in view of D'Souza, and further in view of Yamasaki.

In the remarks, the applicant argues that:

As for independent claims 1, 12 and 23, the Applicant primarily argues that there is no support on applicant's currently amended limitations as "notified that the for testing of an upgrade version of different from a network address of the upgrade test the version with application". (see RE page 12, lines 1-10).

Examiner's response:

The examiner disagrees with Applicant's assertion that there is no support on applicant's recited processing methodology.. In fact, Parthsarathy discloses notifying the user that an upgrade is available (E.g. see col. 6:11-15) and D'Souza discloses enabling a user to test said upgrade version with user's data at a network address different from a network address of said base application (E.g. see col. 15:45-60)

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims (1-11), (12-22) and (23-29) are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims (1-9), (8-18) and (19-27) of co-pending Application No. 09/852,774 (hereinafter '774) respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following observation.

Instant Claim	'774 Claim
1. A method for processing testing results obtained from a user of an upgrade version of a base application, said method comprising:	1. A method for processing an upgrade version of a base application accessed by a user from an application service provider, said base application being accessible at a

	first network address, said method comprising:
notifying said user that said upgrade version is available for testing;	**notifying said user that said upgrade version is available for testing**; and
enabling said user to test said upgrade version;	**enabling said user to access said upgrade version at said second address.**
enabling a user to test said upgrade version with user's data at a network address different from a network address of said base application;	**installing said upgrade version at a second network address;**
displaying a questionnaire regarding test results of said user, said questionnaire being designed to enable said user to input a predetermined number of possible answers;	3. The method as set forth in claim 1 wherein said notifying is accomplished by effecting a notification screen display on a display device of said user 5. The method as set forth in claim 1 wherein said feedback is in a form of responses to a questionnaire which is caused to be displayed on a display device of said user.
receiving answers to said questionnaire from said user; assigning a quantitative value to each of said possible answers to provide a quantitative score for each question on said questionnaire; and automatically evaluating said quantitative score for each of said questions to provide an indication of acceptability of said upgrade version.	2. The method as set forth in claim 1 and further including receiving feedback from said user regarding said upgrade version. . 4. The method as set forth in claim 3 wherein said notification is provided in response to a user request for access to said base application.
2. The method as set forth in claim 1 wherein said quantitative values are assigned in a manner to provide a lower total score for questionnaire answers more favorable to acceptability of said upgrade version. 3. The method as set forth in claim 2	6. The method as set forth in claim 2 and further including migrating said upgrade version to said user in response to said user. 7. The method as set forth in claim 6 wherein said migration is accomplished by

wherein said upgrade version is notified as being acceptable if said total score for said questionnaire is lower than a predetermined number. 4. The method as set forth in claim 2 wherein said quantitative values are assigned in a manner to provide a higher total score for questionnaire answers more favorable to acceptability of said upgrade version. 5. The method as set forth in claim 4 wherein said upgrade version is notified as being acceptable if said total score for said questionnaire is higher than a predetermined number. 6. The method as set forth in claim 1 wherein detection of an answer indicating that said user experienced an inoperable condition during a test of said upgrade version is effective to provide a notice of non-acceptability of said upgrade version regardless of answers received for other questions in said questionnaire. 7. The method as set forth in claim 1 wherein a favorable total score for answers to said questionnaire is provided by a predetermined minimum number of testers before said upgrade version is indicated as being acceptable. 8. The method as set forth in claim 1 and further including: detecting said indication of acceptability; and automatically sending a predetermined message in response to said detecting. 9. The method as set forth in claim 8 wherein said predetermined message is sent by email. 10. The method as set forth in claim 8 wherein said predetermined message is sent to a designated address of a computer device. 11. The method as set forth in claim 8 wherein said predetermined message is sent to a wireless device.	changing a pointer reference from said first network address to said second network address. 8. The method as set forth in claim 7 wherein said first and second network addresses are located at a single network server site. 9. The method as set forth in claim 7 wherein said first and second network addresses are located at different network server sites.

The limitations recited in claims 1-11 are obvious variations of limitation in '774 Claims 1-9.

The limitations recited in claims 12-22 are obvious variations of limitation in '774 Claim 10-18.

The limitations recited in claim 23-29 is obvious variations of limitation in '774 Claim 19-27.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-7, 12-18 and 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Alessandro US Patent No. 6,556,974 in view of Parthsarathy et al. US Patent No. 6,353,926 (hereinafter Parthsarathy), and further in view of D'Souza, US Patent No. 6,453,468.

As per Claim 1, D'Alessandro teaches that a system for providing accurate, quantifiable and reproducible assessments of an organization's performance based on predetermined criteria. It relates to a remotely accessible system for the collection of employee or non-employee survey responses to quantify various criteria relating to the

operation of an organization. (E.g. see Abstract and associated text). In that D'Alessandro discloses the method that covering the steps of:

"displaying a questionnaire regarding test results of said user, said questionnaire being designed to enable said user to input a predetermined number of possible answers;" (E.g. see FIG. 3 and associated text);

"receiving answers to said questionnaire from said user; assigning a quantitative value to each of said possible answers (E.g. see FIG. 3, second question, answer "Rarely Agree (20%)" and associated text) to provide a quantitative score for each question on said questionnaire;" and

"automatically evaluating said quantitative score for each of said questions to provide an indication of acceptability of said upgrade version." (E.g. see FIG.5 and associated text).

D'Alessandro doesn't explicitly disclose notifying said user that said upgrade version is available. However, Parthsarathy discloses notifying the user that an upgrade is available (E.g. see col. 6:11-15). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Parthsarathy into the system of D'Alessandro, to include a notification feature. The modification would have been obvious because one of ordinary skill in the art would have been motivated to automatically notify the user of the upgrade when the application is accessed.

The combination teaching of D'Alessandro and Parthsarathy doesn't explicitly disclose enabling a user to test said upgrade version with user's data at a network address

different from a network address of said base application. However, D'Souza discloses enabling a user to test said upgrade version with user's data at a network address different from a network address of said base application (E.g. see col. 15:45-60). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the combination teaching of D'Souza into the system of D'Alessandro and Parthsarathy, to enable a user to test said upgrade version with user's data at a network address different from a network address of said base application. The modification would have been obvious because one of ordinary skill in the art would have been motivated to allow the uncertified business logic module to be brought on line gradually with routing function.

As Per claim 2, the rejection of claim 1 is incorporated and further D'Alessandro teaches:

"said quantitative values are assigned in a manner to provide a lower total score for questionnaire answers indicative of to acceptability of said upgrade version." (E.g. see col. 9:36-64, lowest score).

As Per claim 3, the rejection of claim 2 is incorporated and further D'Alessandro doesn't explicitly disclose "said upgrade version is notified as being acceptable if said total score for said questionnaire is lower than a predetermined number". However, Official notice is taken is the preference is predetermine to have the lower score the better (E.g. the most acceptable weight is 0 and the least acceptable weight is 1), then if the total score is lower than the predetermined number, it is considered as acceptable.

As Per claim 4, the rejection of claim 2 is incorporated and further D'Alessandro teaches:

"said quantitative values are assigned in a manner to provide a higher total score for questionnaire answers indicative of to acceptability of said upgrade version." (E.g. see col. 9:36-64, lowest score).

As Per claim 5, the rejection of claim 4 is incorporated and further D'Alessandro doesn't explicitly disclose "said upgrade version is notified as being acceptable if said total score for said questionnaire is higher than a predetermined number". However, Official notice is taken is the preference is predetermine to have the higher score the better (E.g. the most acceptable weight is 1 and the least acceptable weight is 0), then if the total score is higher than the predetermined number, it is considered as acceptable.

As Per claim 6, the rejection of claim 1 is incorporated and further the combination teaching of D'Alessandro and Hameluck teaches:

"wherein detection of an answer indicating that said user experienced an inoperable condition during a test of said upgrade version is effective to provide a notice of non-acceptability of said upgrade version regardless of answers received for other questions in said questionnaire." (E.g. see Hameluck, FIG. 3, list box 32 and multi line edit field 33 and associated text, e.g. col. 5:12-37).

As Per claim 7, the rejection of claim 1 is incorporated and further D'Alessandro teaches:

"a predetermined threshold total score for answers to said questionnaire is provided by a predetermined minimum number of testers before said upgrade version is indicated as being acceptable.." (E.g. see col. 9:36-64).

As Per Claim 12, is the storage medium claim corresponding to the method claim 1 and is rejected under the same reason set forth in connection of the rejection of claim 1.

As per Claims 13-18, the rejection of claim 12 are incorporated and are rejected under the same reason set forth in connection of the rejection of claims 2-7 respectfully.

As Per Claim 23, is the system claim corresponding to the method claim 1 and is rejected under the same reason set forth in connection of the rejection of claim 1.

As per Claims 24-28, the rejection of claim 23 are incorporated and are rejected under the same reason set forth in connection of the rejection of claims 2-7 respectfully.

6. Claims 8-11, 19-22 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Alessandro in view of Parthsarathy, further in view of D'Souza, and further in view of Yamasaki, US Patent No. 5,699,517.

As Per claim 8, the rejection of claim 1 is incorporated and further the combination teaching of D'Alessandro, Parthsarathy and D'Souza doesn't explicitly disclose detecting said indication of acceptability; and automatically sending a predetermined message in response to said detecting. However, Yamasaki teaches "detecting said indication of acceptability and automatically sending a predetermined message in response to said detecting" (E.g. see col. 2:31-52). The Examiner interprets the "not lower than a threshold value" as "indication of acceptability" and the detecting is inherent when a message is sent. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Yamasaki into the system of D'Alessandro, Parthsarathy and D'Souza, to send a message in response to detection of acceptability. The modification would have been obvious because one of ordinary skill in the art would have been motivated to inform the application developer whether the acceptance is reached or not.

As Per claim 9, the rejection of claim 8 is incorporated and further Official Notice is taken that "said predetermined message is sent by email" is known in the internet environment. People with an email account are easy to be reached if they have access to the internet.

As Per claim 10, the rejection of claim 8 is incorporated and further Official Notice is taken that people can use computer device with a valid MAC or IP address to send or receive email.

As Per claim 11, the rejection of claim 8 is incorporated and further Official Notice is taken that a wireless device like cell phone with capability of send or receive email can read the email.

As per Claims 19-22, the rejection of claim 12 are incorporated and are rejected under the same reason set forth in connection of the rejection of claims 8-11 respectfully.

As Per Claim 23, is the system claim corresponding to the method claim 1 and is rejected under the same reason set forth in connection of the rejection of claim 1.

As per Claim 29, the rejection of claim 23 is incorporated and is rejected under the same reason set forth in connection of the rejection of claim 8.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Correspondence Information

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kuo-Liang J Tang whose telephone number is (571) 272-3705. The examiner can normally be reached on 8:30AM - 7:00PM (Monday – Thursday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kuo-Liang J. Tang

Software Engineer Patent Examiner

TUAN DAM
SUPERVISORY PATENT EXAMINER